

IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(LAND DIVISION)

IN THE MATTER of the Cook Islands Act 1915

A N D

IN THE MATTER of an application to revoke  
succession orders to the  
interest of MOARI in the  
land named ENUAKURA  
SECTION 205B, AVARUA

BETWEEN MOE PONGA of Rarotonga

Applicant

A N D APORO WILLIAMS and  
others

Respondent

Mrs Pierre for Moe Ponga, the Applicant  
Mrs Browne for Aporo Williams, the Respondent  
Date of Hearing : 25 and 29 June 1993  
Date of Judgment : 18 November 1993

JUDGMENT OF DILLON J.

This is an application to revoke a succession order which relates to interests in the land known as Enuakura Section 205B, Avarua. However the succession order relates back to the acquisition of certain interests by way of an exchange order made on 9 November 1926 (M.B. 10/86) and relating to the Enuakura Block above and the Ponono Section 114, Avarua Block.

The titles to those two blocks disclose the following positions relevant to those matters requiring the Court's consideration.

Enuakura 5, 6 and 205

A Partition Order was made by the Appeal Court on 17 November 1993 vesting the land

in :

1. Henare Keta, m.a.
2. Aitu, f.a.

12.9 ars of this land was subsequently called Section 205B. This section was then leased to Henry Williams for 60 years from 11 July 1914.

On 9 November 1926 (M.B. 10/86) an Exchange Order was made by the Court vesting the interests of Henare Keta and Aitu in Section 205B in :

1. Moari, f.a.

The exchange above related to the interest of Moari in Ponono Section 114.

The title to Enuakura Section 205B as at 9 November 1926 was therefore :

1. Moari - f.a.
  - (a) Subject to a Lease to Henry Williams on 22.11.1954 (M.B. 22/230). S/O to Lease of Henry Williams in favour of his widow Moari Williams, f.a.
  - (b) S/O vesting the freehold interest 24.6.1966 (M.B. 6/228) of Moari in 21 successors.

#### **Ponono 114**

By order on Investigation of Title dated 13 March 1906 (M.B. 2/259) this Block was vested in eleven original owners of whom the following three are relevant to this enquiry.

1. Henare Keta                    m.a.
2. Te Uira                        f.a.
10. Moari                         f.a.

Te Uira is deceased and on 12 January 1917 (M.B. 8/170) was succeeded by :

Henare Keta and Aitu

who both also succeeded to the interests of Tapaeru (No. 4) and Pi (No. 9).

By Exchange Order dated 9 November 1926 (M.B. 10/86), Moari (No. 10) exchanged her interest in this Block for the interests of :

Henare Keta and Aitu

in the Enuakura 205B Block.

The nett result of this Exchange Order therefore meant that Moari became the sole owner of the freehold of the Enuakura 205B Block and in time Moari Williams became the successor to the leasehold interest originally held by Henry Williams.

The question to be resolved therefore in order to determine this application -

Is Moari (No. 10) in the Order on Investigation of Title to the land Ponono 114 and the sole owner in the Partition Order of Enuakura 205B also dated 9 November 1926 (M.B. 10/86) one and the same as Moari Williams who succeeded to the leasehold interest of Henry Williams; and whose descendants have succeeded to the interests of Moari in the freehold interest of this Block?

### **The Exchange Order**

The application for Order of Exchange is dated 22 September 1926. The application is made by Moari; the purpose of her application is stated as follows :

"in order to secure a house site portion in the said land Enuakura 205 Avarua".

The application was signed "Moari per H. Williams" and was witnessed by "G. Henry, Clerk & Interpreter".

The application was endorsed by "Aitu"; and by "Henare Keta by his mark"; and witnessed again by "G. Henry, Clerk & Interpreter".

Pausing at this point it is relevant to point out that the applicant was critical of this application and the manner of its execution. It was claimed that "Moari" did not sign the application. It was further claimed that the application was not signed by Henry Williams, i.e. "Moari per H. Williams". I do not consider it is necessary to go into those technical or practical implications since I believe any such technicality has been cured by the subsequent Exchange Order that was made by the Court on 9 November 1926. The minutes of that Court sitting are recorded in M.B. 10/85 and 86 as follows :

"9 November 1926

274 )      Application for Exchange  
1067)

Moari owner in Ponono 114 Takuvaine

to exchange with    Henare Keta      )      owners in  
   and Aitu                          )      Enuakura Sect. 205B

(as leased to Henry Williams)

All present.

Explained and agree - values evidence.

Exchange order made Moari interest in Ponono 114 for interest of Henare Keta and Aitu in part Enuakura surveyors 205B.

II. By agreement Partition orders made as follows :

Order 10/-

No Fee.      (1)    Partition order for Enuakura 205B in name of  
H.F.A.    Moari f.a. (green on plan)

Order 10/-      (2)    Partition order for Enuakura 205A No. 1 in names of  
   Henare Keta m.a. and                          )  
   Aitu f.a.    )                  Equally

(Blue on plan)

H.F.A.

(Shares equal by measurement cut off corner of road as on plan.)

The record discloses that following the preparation of the application for exchange dated 22 September 1926, three parties to that application were "all present" at the Court hearing on 9 November 1926 - at least that is what the Judge has recorded in his minutes. In fact the Judge goes further and records that he "explained and agree - values evidence".

### **This Application**

The thrust of this application originally sought the revocation of the Succession Order made on 6 December 1989. That of course dealt with the succession of the twenty one descendants to Moari who the descendants claimed was Moari Williams, the widow of Henry Williams.

The applicant, however, claims that Moari is Moari a Tairi, also known as Moari a Nio.

The application originally sought the revocation and cancellation of that 6 December 1989 order "upon the grounds that the Order was made in error".

In the course of the hearing Mrs Pierre abandoned that claim of "error" and instead relied on a claim that the original exchange order was a "fraud". This claim of course was not part of the original application and only came to light towards the end of the hearing on the second day.

However I do not have to consider that position further. In submissions filed by Mrs Pierre subsequent to the hearing she acknowledges the correctness of the exchange application; the Court Order on the exchange; and that no fraud has been committed. She wishes her application dealt with on the original basis namely revocation of 6 December 1989 succession order on the grounds that it was made in error. In other words that "Moari" is not "Moari Williams" but rather is "Moari a Tairi; or Moari a Nio" and it is this error that the applicant requires corrected. I propose therefore to consider the 1989 Succession Order only and not the Exchange Order as sought by Mrs Pierre.

### **Submission by Mrs Pierre as to "Error"**

Very full and detailed submissions have been presented by Mrs Pierre on behalf of the applicant. These submissions have been both interesting and of considerable assistance in trying to determine just who is "Moari" in the Enuakura 205B Block.

I have directed my attention to the question of "error" only since Mrs Pierre has abandoned the claim as to fraud which was directed at the Order of Exchange. This Order is now accepted as validly made. Consequently at 9 November 1926 Moari became the sole owner of Enuakura 205B Block; that she acquired the freehold title to that Block "in order to secure a house site portion in the said land"; she acquires the title subject to the lease to Henry Williams; and that lease does not expire until 1974 - a further 48 years.

At this point it is relevant to ask - which Moari - Mrs Pierre's or Mrs Browne's - would want Enuakura 205B for a house site if Henry Williams had exclusive right and title to it for a further 48 years. On the face of that evidence it would be reasonable to assume that Moari Williams who it is conceded by Mrs Pierre is the wife of Henry Williams exchanged her interests in the Ponono Section 114 Block in order to acquire the sole ownership of the Enuakura 205B Block over which her husband held a 60 year lease with 48 years still to run "in order to secure a house site to that Block". However that is only assumption based on what one would "presume" from those facts. I do not believe one should presume when dealing with such important issues which require the identification and determination of geneological claims and counter-claims.

For example Mrs Browne in her submissions stated in paragraph 6 as follows :

- "6. **THE** identity of Moari was established in 1926 by virtue of an Exchange Order. The application for Order of Exchange was signed by Moari Williams, Henare Keta and by his niece, Aitu. One would assume that Henare Keta would have known if he was dealing with the wrong Moari.

By agreeing to the exchange was confirmation that the Moari in Ponono Section 114, Avarua was Moari Williams. The Succession Order to Moari Williams in favour of the Respondents was made on 6 December 1989."

While the Exchange Order is now not challenged as previously nevertheless I do not believe the identity of "Moari" has been established by that Exchange Order as claimed by Mrs Browne. She made that claim on the basis that "the application for Order of Exchange was signed by Moari Williams...". It was not. It was in the name of Moari and signed by "Moari

per H. Williams", which of course does not establish the identity of Moari as Moari Williams.

Mrs Pierre referred to and had attached to her submissions copies of certificates; titles; and Minute Book records. I have considered these many times. I refer to some of these - marriage certificate of Moari's fourth marriage; her death certificate; her marriage certificate to Katuke; M.B. references 2/69; 2/94; 5/261-265; 7/120; 8/168; 8/472; 16/364-366; geneology by Aporo Williams.

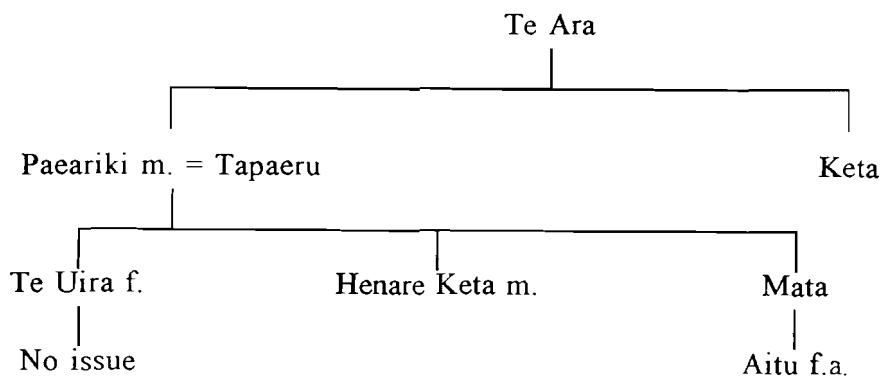
I have paid particular attention to the heavy reliance placed by Mrs Pierre on the Areanu 104A Block; the geneology of Moari a Nio; the rights of Kimi, son of Moari a Nio in this particular Block and of course her references throughout to this Block the subject of this application and the Ponono Section 114 Block.

Mrs Pierre has referred to in particular M.B. 8/168 and the evidence therein. She has provided the background as to how Te Uira so she says adopted Moari a Tairi. The extract from M.B. 8/168 is as follows :

"203. Succession to Te Uira in Areanu 104B

Applicant - Enere Keta

Enere Keta (sworn) Te Uira died a long time ago. Left no will. Will give genealogy.



Te Uira adopted Moari f.a. Not registered as Te Uira died before Land Court established. Don't want Moari appointed as she is in Ponono. No objectors.

Succession order made in favour of Henare Keta m.a. and Aitu f.a. in equal share

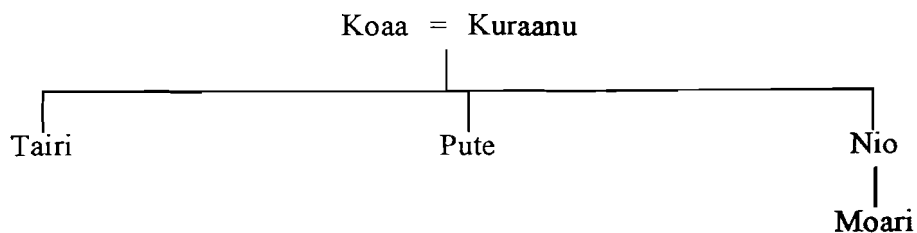
Order 5/- Oath : 2/-"

Mrs Pierre claims that this evidence confirms the adoption of Moari. She says further that that Moari is Moari a Tairi alias Moari a Nio; and that the successors to that Moari are set out in paragraph 6 of her submissions, as follows :

"6) That the Court revoke the S/O dated 6/12/1989 and grant a new Succession Order in favour of the issues of MOARI A TAIRI -

1. Kimi a Moari m.d.
2. Paria Katuke m.d.
3. Nanua Katuke f.d.
4. Okirua Katuke m.d.
5. Pativai Teakaraanga f.d.
6. Tere Teakaraanga m.d.
7. Tairi Teakaraanga m.d. in their respective shares"

Mrs Pierre relies in the main on the geneology presented in M.B. 2/69 and M.B. 7/120. The latter shows the geneology of the Moari she represents as follows :



This geneology related to land in Tutakimoa 20. Te M.B. 2/69 reference referred to the Areatu 104 Block.

Having absorbed the evidence presented by Mrs Pierre at the hearing and in the detailed submissions she has filed, I turn now to consider the evidence adduced by Mrs Browne and the submissions she has prepared.

**Submissions by Mrs Browne for the Objectors**

Mrs Browne bases her objections on the geneology of Moari Williams which she sets out in paragraph 5(ii) of her submissions, as follows :

"(ii) Moari Williams' geneology is attached herewith. It shows the following :



- (a) Henare Keta, Teuira and Mata were brothers and sisters.
- (b) Mata married Taopua and begat Aitu who in turn adopted Mata and Mavis.
- (c) Taopua had a brother Tangiiu Papai who married Matauri and begat Moari Williams.
- (d) Mata, one of the adopted daughters of Aitu, is the natural child of Moari Williams.
- (e) The Respondents claim that Teuira adopted Moari Williams (not registered) because she was the child of her sisters brother-in-law."

Minute Book 8/168 confirms (ii)(a) above - Mrs Pierre agrees.

Mrs Pierre in her submissions concedes that :

"Eturoa Taopua (m) married Mata, sister of Henare Keta, and begat Aitu. Aitu adopted Mata Brown and Mavis."

It is the third part of Mrs Browne's geneology that Mrs Pierre does not accept. She says -

"Tangiiu Papai or Matauri or Moari Williams has no connections to Henare Keta, Te Uira, Moari or (Moari a Tairi) or Mata."

However, as will be seen, Mrs Browne claims that Moari Williams is the child of Tangiiu Papai and Matauri. This Mrs Pierre strenuously denies. But surely the death certificate of Moari Williams must be of substantial evidentiary notice and proof of this fact. The death certificate shows that Moari Williams died on 24 June 1966 aged 78 years and was the child of Tangiiu Papai and Matauri Papai.

In addition M.B. 8/168 confirms that "Te Uira adopted Moari f.a.". It is claimed that Te Uira adopted Moari Williams "... because she was the child of her sisters brother-in-law". That claim is supported by the geneology.

Mrs Pierre has made no submissions on the facts set out in Moari Williams' death certificate - for what reason I do not know.

There is another factor I should refer to since Mrs Pierre has not. Moari Williams died on

24 June 1966. The application for succession was not made until 1989. Mrs Pierre has criticised the family for this delay in making application implying that this delay has a sinister connotation. If Mrs Pierre's clients believed they were entitled to succeed to this land then the question could be asked of them - why have they waited from 1966 till 1993 to make application, i.e. 27 years? Of further significance in this context is the fact that Moari a Tairi died in 1937. Why have they waited till 1993 - i.e. 56 years - to succeed to this land?

There are other difficulties that neither Mrs Pierre nor the Court have been able to resolve. For example :

- (i) There is a difficulty which is unresolved in the geneology presented by Mrs Pierre - that Moari a Tairi and Te Uira seem to be of the same generation;
- (ii) The Exchange Order was made on 9 November 1926. Moari a Tairi was then 54 years. She did not object. She died in 1937. For those eleven years since the Exchange Order she did not object. Now 67 years after the Exchange Order the first objection is presented;
- (iii) Mata, one of the adopted daughters of Aitu, is the natural child of Moari Williams.

### **Conclusion**

It is correct as Mrs Pierre has said -

"The question that falls to be answered in this application is who is "Moari"?"

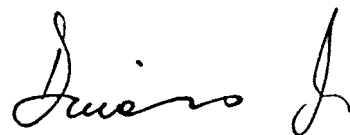
The applicant claims that "Moari" is Moari a Tairi alias Moari a Nio.

The respondent claims that "Moari" is Moari Williams.

Upon the evidence presented to me I am able to determine that "Moari" is Moari Williams. The application is dismissed.

Both Mrs Pierre and Mrs Browne have sought costs from the Court. I shall be sitting in

Rarotonga later this month. This application for costs can be dealt with in chambers to suit the convenience of both Mrs Browne and Mrs Pierre.



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Dillon J.